



Methods for Assuring Access to Covered Medicaid Services (CMS-2328-FC) Final Rule
And
Request for Information (RFI)
October 29, 2015

Overview

Today the Centers for Medicare & Medicaid Services (CMS) issued a final rule that allows states and CMS to make better informed, data-driven decisions when considering whether proposed changes to Medicaid fee-for-service payment rates are sufficient to ensure that Medicaid beneficiaries have access to covered Medicaid services.

Earlier this year, the Supreme Court decided in Armstrong v. Exceptional Child Center, Inc., 135 S. Ct. 1378 (2015), that Medicaid providers and beneficiaries do not have a private right of action to contest state-determined Medicaid payment rates in federal courts, placing greater importance on CMS review to ensure that such rates are “consistent with efficiency, economy and quality of care” and ensure sufficient beneficiary access to care under the program. The Court concluded that federal administrative agencies are better suited than federal courts to make these determinations. To strengthen CMS review and enforcement capabilities, the final rule requires states to provide more information so that CMS can better monitor, measure, and ensure Medicaid access to care within fee-for service reimbursement methodologies.

In addition to the final rule, CMS is developing procedures to further bolster the administrative record that is used to document compliance with the final rule and ensure that there is consistent national application of its requirements. CMS is also issuing a Request for Information to obtain input into additional approaches that it and states may consider to better ensure compliance with Medicaid access requirements.

New Procedures for Rate Reductions and Payment Restructuring

The final rule establishes new procedures at the state level necessary for CMS approval of provider rate reductions or rate restructuring in ways that may negatively impact access to care. As part of these procedures, states will need to consider input from providers, beneficiaries, and other stakeholders. In addition, states will need to perform an analysis of the effect that such rate change will have on beneficiary access to care.

Specifically, states will need to review and analyze program data that has been developed consistent with an Access Monitoring Review Plan to determine that access is sufficient before submitting the proposed reduction/restructuring in provider payments to CMS. They will need to consider input from beneficiaries, providers, and other stakeholders within their analysis. States will also need to monitor the effect the changes have on access to care for at least three years after the changes are effective. CMS is requiring these new monitoring procedures

because the impact of rate changes on access to care may not be apparent at the time the changes are adopted. States will continue to have the discretion to set program rates and improve access to care through a variety of strategies.

Ongoing Access Review for Certain Services

In order to improve the data with which states and CMS monitor access, the regulation requires states to submit Access Monitoring Review Plans. The plans must specify data sources that will support a finding of sufficient beneficiary access and will address:

- The extent to which beneficiary needs are met;
- The availability of care and providers;
- Changes in beneficiary service utilization; and
- Comparisons between Medicaid rates and rates paid by other public and private payers.

The Access Monitoring Review Plans must provide for state reviews of a core set of five services: primary care, physician specialists, behavioral health, pre- and post-natal obstetrics (including labor and delivery), and home health services. These services are highly utilized and are indicators of overall access to care in Medicaid programs. States may add additional services at their discretion, and must monitor access for any service for which payments have been reduced or restructured. Additionally, if states or CMS receive a significantly high number of complaints about access to care for additional services, states will need to add them to their review plan.

Within the review plans, states will choose the appropriate measures, data sources, baselines and thresholds that take into account state-specific delivery systems, beneficiary characteristics and geography. The review plans will need to be reviewed and updated at least every three years.

CMS is requesting comments, through a 60 day comment period, on the access review requirements, including the service categories required for ongoing review, elements of the review, the timeframe for submission, whether we should allow exemptions based on state program characteristics (for example, high managed care enrollment), the provisions from which states could be exempted based on the specific program characteristics, and alternatives to ensuring compliance with Medicaid access requirements for exempted services in lieu of the procedures described in this final rule with comment period.

Ongoing Beneficiary and Provider Feedback on Access to Care

Beneficiary experience in accessing Medicaid services and provider experience in delivering care are important indicators of whether access is sufficient and beneficiary and provider input will be particularly informative in identifying access issues. The final regulation requires states to implement ongoing mechanisms for beneficiary and provider input on access to care (through hotlines, surveys, ombudsman, or another equivalent mechanism). States will need

to promptly respond to the input citing specific access problems, with an appropriate investigation, analysis, and response.

Accompanying Request for Information (RFI)

CMS is seeking feedback on whether and what core access measures, thresholds, and access resolution processes would be useful in ensuring access to care to Medicaid beneficiaries. CMS also seeks input into measuring access to long term care and home and community based services.

The final rule with comment and request for information are available on the Federal Register at <https://www.federalregister.gov/public-inspection> starting October 29, 2015 and can be viewed at <https://www.federalregister.gov> starting November 2, 2015.

For more information on this announcement, visit:

<http://cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2015-Press-releases-items/2015-10-29-2.html>

For additional information, visit: <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/access-to-care/access.html>

